



Application No.: 09/893,619

AF
Docket No.: M4065.0467/P467

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:
Amy R. Griffin

Application No.: 09/893,619

Confirmation No.: 4918

Filed: June 29, 2001

Art Unit: 3652

For: LIFT AND ALIGN TABLE

Examiner: C. A. Fox

SUBSTITUTE REPLY BRIEF UNDER 37 C.F.R. § 41.41

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Substitute Reply Brief is pursuant to 37 CFR § 41.41 and is responsive to the Examiner's Answer mailed on March 20, 2006, in connection with the appeal from the final rejection of claims 1-4, 7-13, 17-28, 31-35 and 39-46 in the above-identified application mailed on December 29, 2004. The Examiner's Answer of March 20, 2006 was submitted in response to an Order Returning Undocketed Appeal to Examiner mailed on February 24, 2006. The Order noted that the "Evidence Relied Upon" section of the original Examiner's Answer (of November 2, 2005) was not completed and requested a corrected Examiner's Answer.

The Examiner's Answer mailed on March 20, 2006, stated that the Appellant's "reply brief filed on December 29, 2005 and noted in a response on January 17, 2006 is still part of the record and need not be resubmitted by appellant." However, Appellant submits this Substitute Reply Brief, for the Board's convenience, to account for the different page numbering in the Examiner's Answer mailed on March 20, 2006 as compared with the original Examiner's Answer. This Substitute Reply Brief does not contain any new substantive arguments.

Appellant also submitted, on December 29, 2005, a Request for Oral Hearing pursuant to 37 CFR § 41.47.

Appellant notes with appreciation the indication that the rejection of claim 12 has been withdrawn. Examiner's Answer, page 4. Claim 12 now stands objected to as being dependent upon a rejected claim. For the following reasons, and for the reasons stated the Second Supplemental Appeal Brief ("Appeal Brief") filed on May 9, 2005, Appellant submits that all of the rejections should be reversed by this honorable Board.

A. The subject matter of claims 1, 8-12, 25, 32 and 33 would not have been obvious over Beach in view of Bressler.

As discussed in the Appeal Brief, Beach fails to teach or suggest a "third section disposed over said sliding mechanism and attached to said block," as recited in claim 1. Rather, in Beach the "third section (13)" is not "disposed over said sliding mechanism" -- it is the sliding mechanism. The assembly 13 cannot be the claimed "sliding mechanism" and at the same time a "third section disposed over said sliding mechanism."

The Examiner's Answer fails to overcome this argument. The Examiner's Answer offers only the following: "[t]he appellant is correct that the sliding assembly (13) of beach includes the block (113) and a lead screw (110), but this does not preclude the sliding portion of the assembly from being located above the actuation portion of the assembly as claimed." Examiner's Answer, page 12 (emphasis added). The requirement for establishing an obviousness-type rejection is that the references must teach or suggest every claim limitation. MPEP § 2143.03. It is not whether the reference "precludes" the claimed structure. Based on at least this reason the rejection of claim 1, and every claim dependent therefrom, should be reversed.

In addition, Appellant argued that Bressler could not be properly combined with Beach to teach "slider blocks having slide rails," as recited in claim 1. The Examiner's Answer responds to Appellant's arguments as if such arguments were based solely on the position that the references belong to non-analogous art. Examiner's Answer, page 12. This is not the case, because Appellant provided arguments specifically pointing out why the proposed substitution of components would not have been obvious to someone skilled in the art. Appeal Brief, pages

10-12. The proposed substitution of components would have made no practical sense, because, as the Examiner's Answer admits, the references use "different types" of structures for "moving different types of heavy equipment." Examiner's Answer, page 12.

One new "reason" for motivation asserted by the Examiner's Answer is "the vertical space savings in providing a slide block arrangement over a tube type slider as taught by Beach." Examiner's Answer, page 13. This is stab in the dark. Neither reference discusses or promotes "vertical space savings." More fundamentally, the basis for this assertion is unfounded because the Examiner's Answer simply assumes that in the references one arrangement of components is differently sized than the other. No support is provided for these assumptions. For these additional reasons, the rejection of claim 1 should be reversed. The rejection of independent claim 25 should be reversed for similar reasons. Appeal Brief, page 13.

B. The subject matter of claims 2-4, 7, 26-28 and 31 would not have been obvious over Beach in view of Bressler, and further in view of Mills.

Claims 2-4, 7, 26-28 and 31 depend from claims 1 and 25, and the rejection of the claims should be reversed at least for the reasons discussed above with respect to claims 1 and 25.

Further, as Appellant explained, no motivation exists to combine the teachings of Beach and Bressler (which is already improper, as discussed above) with Mills. Appeal Brief, pages 14-15. The Examiner's Answer now asserts that motivation exists because "[t]he self limiting of the force of the device taught by Mills is what prevents damaging of the engine or aircraft, this ability is absent in the Beach reference." Examiner's Answer, page 13.

The statement that the ability to "prevent damage" is "absent" in the Beach is a misrepresentation. Beach teaches an adjuster assembly 13 for precise positioning, without causing damage, of an aircraft engine during installation and removal. According to Beach, the adjuster assembly 13 "is capable of a complex pattern of combination of movements to accurately position the load for installation in an airplane." Col. 9, lines 35-38. Mills' "device"

would not add anything to improve Beach. Rather, the proposed combination would result in an addition of a redundant component that requires supply of another energy source (pressurized fluid) not present in the Beach device. There is no motivation for the combination proposed in the Examiner's Answer, and the combination of Mills with Beach and Bressler is improper.

C. The subject matter of claims 13, 17, 19, 20-24 and 34 would not have been obvious over Beach in view of Mills, and further in view of Nemoto.

As Appellants discussed in the Appeal Brief, independent claims 13 and 34 are allowable because Beach, Mills and Nemoto are not properly combinable. Appeal Brief, pages 16-17. The Examiner's Answer now asserts that motivation exists because:

Nemoto teaches [that] ... adding air cylinders (4) to the lifting device will allow the device to lift a heavier head with only manual power that is not geared down. Thus the motivation to combine comes from the teaching of Nemoto that a jack screw with pneumatic cylinder assist can be manually actuated faster than the prior art while requiring no source of power save the operator. In adding Nemoto reference the present drive need not be replaced, but rather augmented with a manual actuator that allows the device to function if power is not available.

Examiner's Answer, page 14. This newly alleged source of motivation fails for two reasons. First, it is based on a misrepresentation of Nemoto. Second, there is absolutely no reason to "augment" Beach with Nemoto's device because it would (1) be redundant, (2) require a wholesale redesign of Beach, and (3) the "problem" asserted by the Examiner's Answer does not exist.

In Nemoto, air cylinders 4 "act as a counter-balancer since they ... have no more than the upward thrust just sufficient to cancel out or counterbalance the weight" of the item to be lifted. Col. 14, ll. 20-25. The air cylinders of Nemoto do not have the "thrust to raise" the load, but rather function bear the weight of the load. Col. 14, ll. 25-28. Thus, Nemoto air cylinders do not function to lift its load.

More importantly, the proposed motivation behind the hindsight reconstruction makes no practical sense. The Examiner's Answer proposes to modify Beach by adding Nemoto's jack screw with pneumatic cylinders to "augment[Beach] with a manual actuator that allows the device to function if power is not available." The Beach lifting mechanism does not require any power that would not be available. Beach teaches a scissor lift mechanism 12 that is actuated by a hydraulic system. Col. 3, l. 44 – col. 4, l. 37. The hydraulic system is actuated by a manually operable pump. Col. 6, ll. 46-47. Thus, a fictional power failure problem requiring "augmentation" in Beach is nothing more than imagination on the part of the Examiner's Answer. And, there is no reason to add to a scissor-type lift assembly, required by Beach, a jack screw mechanism as taught by Nemoto. Such a modification would require a wholesale redesign of the scissor-type lifting mechanism required by Beach. For these additional reasons, the combination proposed by the Examiner's Answer is improper, and the rejection should be reversed.

In response to Appellant's arguments regarding patentability of claim 34, the Examiner's Answer now asserts that "[t]he air bellows taught by Mills assist the jack screws when lifting an engine. ... The two lift mechanisms do assist each other which meets the limitation of the claims as appealed." Examiner's Answer, page 15. This assertion is contradicted by the teaching of Mills. In Mills, the air bellows and jack screws do not "assist" each other as claimed. Rather, the Mills device uses either its jacking screws or its air bellows to lift or adjust the load. Col. 7, ll. 29-59.

The rejection of dependent claim 24 should be reversed for the reasons the Examiner's Answer has withdrawn its the rejection of claim 12, and for the reasons discussed in the Appeal Brief. Appeal Brief, pages 17-18.

D. The subject matter of claim 18 would not have been obvious over Beach, Mills and Nemoto, and further in view of Bressler.

Dependent claim 18 is allowable because Beach, Mills, Nemoto and Bressler are not properly combinable. Appeal Brief, pages 19-20. As discussed above with respect to claim 1,

the Examiner's Answer adds nothing to explain why the proposed combination of three references is proper.

E. The subject matter of claims 35, 39-42, 44, 45 and 46 would not have been obvious over Beach in view Mills and further in view of Nemoto.

Regarding Appellant's arguments for patentability of independent claim 35 the Examiner's Answer relies on its reasoning with respect to claim 34. Examiner's Answer, page 16. The Examiner's Answer fails to address the Appellant's argument that Mills fails to teach or suggest "manually rotating an input shaft attached to jacking mechanisms and supplying a pressurized gas to gas cylinder assemblies to assist moving said support section" as recited in claim 35. Mills teaches a system that uses either its motor-operated jack assemblies or its air bellows. This teaching fails to teach or suggest the claim limitation. Moreover, Beach, Mills and Nemoto are not properly combinable as discussed above and on pages 15-19 of the Appeal Brief.

Regarding independent claim 41, Appellant also argued that Beach, Mills and Nemoto, taken alone or in combination, fail to teach or suggest the claimed "lift mechanism ... between said base frame and said middle frame." The Examiner's Answer responds to this argument by asserting only that "Nemoto does not teach the intermediate platform, but the main reference Beach does." Examiner's Answer, page 16. The Examiner's Answer, on this point, appears to lose track of all of the different components it attempts to combine from all of the different references. Not only does the Examiner's Answer fail to identify the component of Beach that allegedly meets the "intermediate platform" limitation, but it also fails to explain how the remaining limitations of claim 41 would be met. For example, the Examiner's Answer fails to explain how the proposed combination would also meet the limitation "providing a slide mechanism between said middle frame and said top frame," as recited in claim 41. Moreover, the references are not properly combinable, as discussed above with respect to claim 13. For at least these reasons, claim 41 is allowable.

F. The subject matter of claim 43 would not have been obvious over Beach in view of Mills and Nemoto as applied to claim 41, and further in view of Shiiba.

Regarding the rejection of dependent claim 43, Appellant argued that it would not have been obvious to combine the teachings of Shiiba with the already improper combination of Beach, Mills and Nemoto. The Examiner's Answer now asserts that the Shiiba reference is used only "to positively cite providing a pressurized gas to a lifting device." Examiner's Answer, page 16. To the contrary, the rejection of claim 43 proposed by the Examiner' Answer requires one "to modify" Beach, Mills and Nemoto "as taught by Shiiba." Examiner's Answer, page 11. Thus, the proposed combination is improper as discussed on page 22 of the Appeal Brief.

For the above reasons and the reasons in the Appeal Brief, all of the rejections should be reversed by the honorable Board.

Dated: May 18, 2006

Respectfully submitted,

By 

Thomas J. D'Amico

Registration No.: 28,371
Peter A. Veytsman
Registration No.: 45,920
DICKSTEIN SHAPIRO MORIN & OSHINSKY
LLP
2101 L Street NW
Washington, DC 20037-1526
(202) 785-9700
Attorneys for Applicant